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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board held a General meeting on September 30, 2004, at the Sheraton Ontario Airport Hotel, Joshua Room, 429 North Vineyard Avenue, Ontario, California.

2. **ROLL CALL**

Glenn E. Stevens, President of the Board, called the General meeting to order at 8:38 a.m.

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|----------|-----------------------|----------------------|
| Present: | Robert V. Branzuela | Tom Novi |
| | Robert T. (Tom) Flesh | Executive Director |
| | David C. Lizárraga | Howard Weinberg |
| | Haig Papaian | General Counsel |
| | Andy Robles | Robin Parker |
| | Sushil K. Sharma | Senior Staff Counsel |
| | Alan J. Skobin | |
| | Glenn E. Stevens | |

Absent: David W. Wilson

Mr. Stevens welcomed Matt Wald, Director of Government Affairs, for the Recreation Vehicle Industry Association.

3. **APPROVAL OF THE MINUTES FROM THE APRIL 21, 2004, SPECIAL MEETING, AND THE APRIL 22, 2004, GENERAL MEETING**

Mr. Lizárraga moved to adopt the April 21, 2004, Special meeting minutes. Mr. Flesh moved to amend the minutes on page 3, paragraph 3, and modify the language as follows: "...(1) sensitive topics concerning pending litigation should be avoided as should discussions concerning pricing issues within the industry." Mr. Flesh seconded the motion as amended. The motion carried unanimously.

Mr. Skobin moved to adopt the April 22, 2004, General meeting minutes. Mr. Papaian seconded the motion. The motion carried unanimously.

4. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board shall convene in a closed Executive Session to deliberate on the decisions to be reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

a. **CONSIDERATION OF PROPOSED DECISION**

RAY FLADEBOE LINCOLN-MERCURY, INC., FLADEBOE AUTOMOTIVE GROUP, INC. v. AMERICAN ISUZU MOTORS, INC.
Protest No. PR-1880-03

Consideration of the Administrative Law Judge's Proposed Decision, by the Dealer and Public members of the Board.

This matter was postponed pending the arrival of Protestant's counsel.

b. **CONSIDERATION OF PROPOSED DECISION**

RAY FLADEBOE LINCOLN-MERCURY, INC., FLADEBOE AUTOMOTIVE GROUP, INC. v. AMERICAN ISUZU MOTORS, INC.
Protest No. PR-1881-03

Consideration of the Administrative Law Judge's Proposed Decision, by the Dealer and Public members of the Board.

This matter was postponed pending the arrival of Protestant's counsel.

5. **OPEN SESSION**

This matter was postponed pending the arrival of Protestant's counsel.

6. **CONSIDERATION OF RECOMMENDATION**

AUTO STIEGLER, INC. v. MERCEDES-BENZ USA, LLC
Protest No. PR-1898-04

Consideration of recommendation that the Executive Director seek direction from the New Motor Vehicle Board that Mercedes-Benz USA, LLC, recover attorneys' fees and costs from Camarilla, Inc., d/b/a V.I.P. Auto Upholstery and its attorney for failure to comply with authorized discovery without substantial justification for that failure (Veh. Code § 3050.2(b)), by the Public members of the Board.

Oral arguments were presented before the Public members of the Board. Jeffrey L. Willis, Esq., represented third-party Camarilla, Inc., d/b/a V.I.P. Auto Upholstery. Craig Ledsworth, President of Camarilla, was also present. Gwen J. Young, Esq., of Wheeler Trigg & Kennedy, LLP, represented Respondent.

Mr. Stevens postponed the Board's deliberation to allow the parties to discuss settlement. The deliberations were continued until after agenda item no. 17.

7. **CONSIDERATION OF FORD MOTOR COMPANY'S REQUEST FOR RE-EXTENSION OF TIME TO OWN AND OPERATE SUNNYVALE LINCOLN MERCURY SALES, INC., IN PREPARATION FOR A SALE TO A SUCCESSOR INDEPENDENT FRANCHISEE IN COMPLIANCE WITH VEHICLE CODE SECTION 11713.3(O)(2)(A), BY THE DEALER AND PUBLIC MEMBERS OF THE BOARD**

Oral comments were presented before the members of the Board. Cranston J. Williams, Esq., of Baker & Hostetler, presented oral comments on behalf of Ford Motor Company and Sunnyvale Lincoln Mercury Sales, Inc. Jim Barnes of Ford Motor Company was also present. Michael M. Sieving, Esq., of the Law Offices of Michael M. Sieving presented comments on behalf of Joe Kerley Lincoln Mercury and Stanford Lincoln Mercury.

The Public members discussed the request and deliberated in open session. Mr. Flesh moved to continue this matter until the Board's November 4, 2004, General Meeting in San Francisco. Mr. Lizárraga seconded the motion. The motion carried unanimously.

4. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board shall convene in a closed Executive Session to deliberate on the decisions to be reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

a. **CONSIDERATION OF PROPOSED DECISION**

RAY FLADEBOE LINCOLN-MERCURY, INC., FLADEBOE AUTOMOTIVE GROUP, INC. v. AMERICAN ISUZU MOTORS, INC.
Protest No. PR-1880-03

Consideration of the Administrative Law Judge's Proposed Decision, by the Dealer and Public members of the Board.

Agenda item was considered upon the arrival of Protestant's counsel.

Prior to oral arguments, the Board suggested to American Isuzu Motors that it deal fairly with consumers who had their vehicles repaired by Fladeboe Automotive Group. Isuzu representatives agreed that it would be sensitive to this matter.

Oral arguments were presented before the Dealer and Public members of the Board. The parties stipulated to allow the Dealer and Public members to consider this matter. Michael M. Sieving, Esq., of the Law Offices of Michael M. Sieving, represented Protestant. Bruce L. Ishimatsu, Esq., of Bryan Cave LLP, represented Respondent. Ed Robinson of American Isuzu Motors, Inc., was also present.

After the conclusion of oral arguments in agenda item no. 4(b), the Dealer and Public members of the Board deliberated in closed Executive Session. Mr. Flesh moved to adopt the Administrative Law Judge's Proposed Decision. Mr. Robles seconded the motion. The motion carried unanimously.

b. **CONSIDERATION OF PROPOSED DECISION**

RAY FLADEBOE LINCOLN-MERCURY, INC., FLADEBOE AUTOMOTIVE GROUP, INC. v. AMERICAN ISUZU MOTORS, INC.
Protest No. PR-1881-03

Consideration of the Administrative Law Judge's Proposed Decision, by the Dealer and Public members of the Board.

Agenda item 4(b) was considered upon the arrival of Protestant's counsel.

Oral arguments were presented before the Dealer and Public members of the Board. The parties stipulated to allow the Dealer and Public members to consider this matter. Michael M. Sieving, Esq., of the Law Offices of Michael M. Sieving, represented Protestant. Bruce L. Ishimatsu, Esq., of Bryan Cave LLP, represented Respondent. Ed Robinson of American Isuzu Motors, Inc., was also present.

The Dealer and Public members of the Board deliberated in closed Executive Session. Mr. Flesh moved to adopt the Administrative Law Judge's Proposed Decision. Mr. Lizárraga seconded the motion. The motion carried unanimously.

5. **OPEN SESSION**

The Dealer and Public members returned to Open Session. Mr. Stevens announced that the Proposed Decisions in Protest Nos. PR-1880-03 and PR-1881-03 were adopted by the members.

8. **REPORT THAT GATEWAY CHEVROLET MOTOR COMPANY, INC. HAS CEASED OPERATING A DEALERSHIP BUSINESS, HAVING SOLD THE ASSETS ASSOCIATED WITH THAT BUSINESS TO ANOTHER ENTITY**

Mr. Novi reported that Gateway Chevrolet Motor Company, Inc., had ceased operating a dealership business. The assets of that business were sold to another entity and the matter resolved.

9. **CONSIDERATION OF WHETHER TO REQUEST THE DEPARTMENT OF MOTOR VEHICLES TO WITHHOLD RENEWAL OF THE OCCUPATIONAL LICENSE OF WESTERN GOLF CAR MANUFACTURING, INCORPORATED, FOR FAILURE TO PROVIDE THE DATA NECESSARY TO CALCULATE THE ANNUAL BOARD FEE (13 CCR § 553.75 AND VEH. CODE § 3050(C)(3)) - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tom Novi and Robin Parker concerning Western Golf Car Manufacturing, Incorporated's failure to provide the data necessary to calculate the annual Board fee. Ms. Parker indicated that the staff has

exhausted all means available to seek Western Golf Car Manufacturing's compliance with the Board's request for data. Subject to the staff verifying that Western received the certified notices from the Board requesting its appearance and compliance, Mr. Skobin moved to direct the Department of Motor Vehicles to withhold the renewal of Western's occupational license and suspend its existing license until the data has been provided. Mr. Papaian seconded the motion. The motion carried unanimously.

10. **ANNUAL UPDATE CONCERNING THE NUMBER OF MONTHLY HITS TO THE BOARD'S WEB SITE AND WHERE INFORMATION IS BEING SOUGHT - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tom Novi and Dawn Kindel concerning the semi-annual report on user "hits" to the Board's web site. Mr. Novi reported that in the last fiscal year, the web site received a total of 30,161 visitors, with an average of 1,524 hits per day. This was an increase of 8,351 visitors over the previous year.

11. **CONSIDERATION OF SUGGESTION BY MARCO ANTONIO FIREBAUGH, CHAIR, LATINO LEGISLATIVE CAUCUS, AND JUDY CHU, CHAIR, ASIAN PACIFIC ISLANDER CAUCUS, THAT THE BOARD INVITE A GROUP OF MAJOR VEHICLE MANUFACTURERS TO APPEAR AT ITS NOVEMBER 4, 2004, GENERAL MEETING, IN SAN FRANCISCO TO SUMMARIZE THEIR CURRENT POLICY AND PLANS, AND THE STATUS OF THEIR EFFORTS TO INCREASE DIVERSITY AMONG NEW VEHICLE FRANCHISEES - BOARD DEVELOPMENT COMMITTEE**

The members were provided a letter dated September 7, 2004, from Marco Antonio Firebaugh, Chair, Latino Legislative Caucus, and Judy Chu, Chair, Asian Pacific Islander Caucus, suggesting that the Board invite a group of major vehicle manufacturers to appear at its November 4, 2004, General meeting, in San Francisco to summarize their current policy and plans, and the status of their efforts to increase diversity among new vehicle franchisees. A subsequent letter dated September 17, 2004, provided additional details and recommended that the following automobile manufacturers and dealer associations be invited:

National Association of Minority Automobile Dealers (NAMAD)
National Automobile Dealers Association (NADA)
American International Automobile Dealers Association (AIADA)
General Motors Corporation
American Honda Motor Company
DaimlerChrysler Corporation
Ford Motor Company
Toyota Motor Sales, USA, Inc.

Mr. Lizárraga moved to adopt the suggestion and schedule this topic for the November 4, 2004, Special meeting. Mr. Skobin seconded the motion. The motion carried unanimously.

12. **CONSIDERATION OF EMPLOYEE RECOGNITION AWARD RECIPIENT AS RECOMMENDED BY THE BOARD DEVELOPMENT COMMITTEE;**

CONSIDERATION OF SUGGESTION THAT THE EMPLOYEE RECOGNITION AWARD BE RENAMED THE "SOLON C. SOTERAS EMPLOYEE RECOGNITION AWARD" - BOARD DEVELOPMENT COMMITTEE

At the July 18, 2000, meeting, the members adopted an Employee Recognition Award Program to award staff for their accomplishments. The staff submitted employee nominations to the Board Development Committee, Tom Flesh and Haig Papaian. The Committee ultimately recommended Dana Lolmaugh as the recipient. Mr. Lolmaugh is a Senior Legal Typist in the Board's Legal Program. He is being recognized for his high energy and positive attitude, which makes working with him a pleasure. He goes out of his way to respond to constituent requests, comes to work early and volunteers to stay late if needed, rarely misses work, and is flexible with holiday requests for time off so that co-workers can be off for their children. His unselfishness was commended, as was his outstanding performance in preparing legal notices and orders, and document requests. Mr. Lizárraga moved to adopt the Committee's recommendation. Mr. Flesh seconded the motion. The motion carried unanimously.

The members were provided with a memorandum from Tom Novi concerning the recommendation that the Employee Recognition Award program be called the "Solon C. Soteras Employee Recognition Award" in recognition of Mr. Soteras' efforts in establishing this program. Mr. Skobin moved to adopt the recommendation. Mr. Flesh seconded the motion. The motion carried unanimously.

Mr. Flesh noted that all of the members of the Board's staff are worthy recipients of this award. He suggested that the members recognize the staff from a team perspective at the December 16, 2004, Special meeting.

13. **STATUS REPORT CONCERNING THE BOARD'S FINANCIAL CONDITION FOR FISCAL YEAR 2003-2004 - FISCAL COMMITTEE**

The members were provided with a memorandum from Tom Novi, Dawn Kindel, and Linda Lighter concerning the Board financial condition report for fiscal year 2003-2004. Mr. Novi reported that the Board expended 81% of its appropriated budget for fiscal year 2003-2004.

14. **STATUS REPORT CONCERNING THE BOARD'S COLLECTION OF THE ARBITRATION CERTIFICATION PROGRAMS' ANNUAL FEE - FISCAL COMMITTEE**

The members were provided with a memorandum from Tom Novi and Dawn Kindel concerning the Board's collection of the Arbitration Certification Programs' Annual Fee. Mr. Novi reported that the fee collection was completed.

15. **CONSIDERATION OF OUT-OF-STATE TRAVEL FOR FISCAL YEAR 2004-2005 - FISCAL COMMITTEE**

The members were provided with a memorandum from Tom Novi and Dawn Kindel concerning the out-of-state travel for fiscal year 2004-2005. Mr. Novi reported that the Board has submitted its out-of-state travel proposals for three of four budgeted trips for fiscal year 2004-2005 to the Department of Motor Vehicles ("Department") for approval.

The Department, as well as the Business, Transportation and Housing Agency, the Department of Finance and the Governor's office have approved these requests.

Mr. Flesh moved to adopt the recommendation that Tom Novi be authorized to attend the October 2004, San Antonio and January 2005, New Orleans meetings, and the Board President, or his designee, be authorized to attend the January 2005, New Orleans meeting. Mr. Robles seconded the motion. The motion carried unanimously.

The request for additional out-of-state trips for Public member education will be handled administratively and reported at a subsequent meeting.

16. **STATUS REPORT ON PARTICIPANT AND AUDIENCE RESPONSES TO THE QUESTIONNAIRE CONCERNING THE BOARD'S 3RD ANNUAL INDUSTRY ROUNDTABLE - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

The members were provided with a memorandum from Tom Novi and Robin Parker concerning the evaluation of the 3rd Annual Industry Roundtable. Ms. Parker reported that the feedback received from attendees was favorable. Ms. Parker also noted that the location for the 4th Annual Industry Roundtable has been changed to the Miramonte Resort and Spa due to unavailability at the Renaissance Esmeralda Resort.

17. **CONSIDERATION OF PROVIDING GOVERNOR SCHWARZENEGGER AN ASSESSMENT OF THE IMPACT ASSOCIATED WITH THE CALIFORNIA PERFORMANCE REVIEW'S RECOMMENDATION THAT THE NEW MOTOR VEHICLE BOARD BE ELIMINATED - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tom Novi and Howard Weinberg concerning providing the Governor with an assessment of the impact associated with the California Performance Review's recommendation that the New Motor Vehicle Board be eliminated. Correspondence from the National Association of Motor Vehicle Boards and Commissions, and the California Motor Car Dealers Association, were also provided to the members. Mr. Weinberg reported that the memorandum would be forward to the co-chairs of the California Performance Review Commission. Mr. Flesh moved to adopt the recommendation. Mr. Robles seconded the motion. The motion carried unanimously. It was also suggested that the memorandum be forwarded directly to the Governor, the Secretary of Business, Transportation & Housing Agency, and the Director of the Department of Motor Vehicles.

6. **CONSIDERATION OF RECOMMENDATION**

AUTO STIEGLER, INC. v. MERCEDES-BENZ USA, LLC
Protest No. PR-1898-04

Consideration of recommendation that the Executive Director seek direction from the New Motor Vehicle Board that Mercedes-Benz USA, LLC, recover attorneys' fees and costs from Camarilla, Inc., d/b/a V.I.P. Auto Upholstery and its attorney for failure to comply with authorized discovery without substantial justification for that failure (Veh. Code § 3050.2(b)), by the Public members of the Board.

Counsel for the parties returned after two hours of settlement discussions. However, they

were unable to reach a resolution on all outstanding issues.

The Public members of the Board deliberated in open session. Mr. Flesh moved to adopt the Administrative Law Judge's Recommendation. Mr. Sharma seconded the motion. The motion carried unanimously.

Camarilla, Inc., d/b/a V.I.P. Auto Upholstery and its attorney, Jeffrey L. Willis, were required to pay Mercedes-Benz USA, Inc.'s attorneys' fees and costs incurred in seeking compliance with the subpoena duces tecum as contained in the fee statement submitted to the Board.

18. **CONSIDERATION OF REVISING CARA PERALTA'S APPOINTMENT AS SETTLEMENT CONFERENCE ADMINISTRATIVE LAW JUDGE (ALJ) TO ENCOMPASS THE NON-SUBSTANTIVE PROCEDURAL FUNCTION OF ISSUING PRE-HEARING CONFERENCE ORDERS; DESIGNATION OF ANTHONY SKROCKI AS THE LAW AND MOTION JUDGE; AND UTILIZATION OF THE REMAINING JUDGES FOR MERITS HEARINGS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tom Novi and Cara Peralta concerning revising Board Attorney Cara Peralta's appointment as a Settlement Conference Administrative Law Judge to encompass the non-substantive procedural function of issuing Pre-Hearing Conference Orders; designation of Anthony Skrocki as the Law and Motion Judge; and utilization of the remaining judges for merits hearings. Mr. Skobin moved to adopt the recommendations. Mr. Robles seconded the motion. The motion carried unanimously.

19. **DISCUSSION CONCERNING PENDING LEGISLATION - POLICY AND PROCEDURE COMMITTEE**

- a. Pending Legislation that impacts the Board.
 - (1) Assembly Bill 1968 (Assembly Member Dutra) [failed passage]
 - (2) Assembly Bill 2848 (Assembly Member Keene)
 - (3) Senate Bill 1711 (Senator Bowen) [failed passage]
- b. Pending Legislation of general interest.
 - (1) Assembly Bill 1839 (Assembly Member Montanez)
 - (2) Assembly Bill 2363 (Assembly Member Correa) [failed passage]
 - (3) Assembly Bill 2369 (Assembly Member Correa) [failed passage]
 - (4) Assembly Bill 2656 (Assembly Member Jackson) [failed passage]
 - (5) Senate Bill 584 (Senator Alarcon) [failed passage]
 - (6) Senate Bill 1721 (Senator Bowen) [failed passage]

The members were provided with a memorandum from Tom Novi and Robin Parker summarizing the pending legislation that impacts the Board and pending legislation of general interest. The summary analyzes the current law, the legislation, and the impact on the Board. Ms. Parker reported that the Governor signed Assembly Bill 2848. All-terrain vehicles will fall within the Board's jurisdiction next year.

20. **EXECUTIVE DIRECTOR'S REPORT**

- a. Administrative Matters.
- b. Status of Protests.
- c. Status of Petitions.
- d. Status of Appeals.
- e. Judicial Review.
- f. Notices Filed Pursuant to Vehicle Code sections 3060/3070 and 3062/3072.
- g. Other.

Mr. Novi provided the members with a Report on Administrative Matters that identified all pending projects, the Board staff and committee assigned, estimated completion dates, and status.

The members were also provided with a copy of the Executive Director's Report.

21. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at 1:05 p.m.

Submitted by

TOM NOVI
Executive Director

APPROVED: _____
Glenn E. Stevens
President
New Motor Vehicle Board